

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6308

PETITION OF THERESA AND DALE RICKMAN

(Hearing held January 27, 2010)

OPINION OF THE BOARD

(Effective date of Opinion, February 26, 2010)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The existing one-story addition requires a variance of 1.40 feet as it is within 28.60 feet of the front lot line. The required front lot line setback is thirty (30) feet.

The subject property is Lot P29, Block 3, Chevy Chase View Subdivision, located at 4001 Glenrose Street, Kensington, Maryland, 20895, in the R-90 Zone (Tax Account No. 00998244).

Decision of the Board: Requested variance **Denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The under construction 10x17.6 foot one-story addition/shed requires a variance.
2. The petitioners testified that their property is a corner lot located at the intersection of Glenrose Street and Connecticut Avenue. The petitioners testified that the subject property has a stormdrain easement located along the back and the eastern side of their lot. The petitioners testified that the stormdrain takes up 28% of the property's buildable envelope and 53% of the property's rear yard. The petitioners testified that their buildable envelope is much smaller than other lots on their street. The subject property is 14,004 square feet. See Exhibit Nos. 4(b) [site plan] and 9 (a) [zoning vicinity map].
3. The petitioners testified that the prior owners converted a part the two-car garage into living space and that their house is the only house on the street with a single garage. The petitioners testified that new construction could not be located in the rear yard because of an existing deck, a patio, the exit from

the garage and the stairs to the basement. The petitioners testified that new construction in the rear yard would be an unattractive view for the neighboring property and that it would reduce the back yard area. The petitioners testified that their rear yard currently has play equipment and that its topography has a significant downward slope. See Exhibit Nos. 14 [site plan] and 15 [rendered site plan].

4. The petitioners testified that if new construction were to be built in the rear yard, any structure would have to be located in the center of the rear yard. The petitioners testified that new construction located elsewhere on the lot would decrease the value of the house. The petitioners testified that the location of the addition, as proposed, is very noisy and that this area of the property can not be used for any other purpose.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

The Board notes that the subject property exceeds the minimum lot size for the R-90 Zone and that new construction could reasonably be accommodated on the lot without the need for a variance. While the stormdrain easement and the sloping topography of the rear yard impinge on the building envelope, these are not extraordinary conditions peculiar to this parcel within the meaning of the ordinance. Petitioner has not shown that new construction without a variance is impossible or particularly difficult under the existing conditions. The extent and location of current improvements on the property reflect choices the petitioners or their predecessors have made and do not render the property unique. Likewise, Petitioners assertion that new construction in the rear yard would be unattractive for the adjoining property is not a relevant factor under 59-G-3.1(a).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 1.40 feet from the required thirty (30) foot front lot line setback for the existing one-story addition is denied.

The Board adopted the following Resolution:

Board Chair Catherine G. Titus was necessarily absent and did not participate in this Resolution. On a motion by Carolyn J. Shawaker, seconded by Walter S. Booth, with Stanley B. Boyd and David K. Perdue, Vice Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

David K. Perdue
Vice Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 26th day of February, 2010.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have the right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.